

LEGISLATIVE INTENT

"Councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (§ 54590)

IN A NUTSHELL

All bodies must:

1. Have **all** their meetings in public
2. Discuss, deliberate & vote during public meeting unless item meets narrow list of exceptions;
3. Give timely sufficiently detailed notice to public of business they will address at their meetings; and
4. Allow members of public to directly address the legislative body during the meeting.

COMMITTEES

Advisory committees composed solely of members of the legislative body but less than a quorum of the body are not subject to the Brown Act, **unless it is a standing committee** that has a defined purpose (eg: a Marketing Committee), or a meeting schedule fixed by formal action of the body (EG: any Committee that was created by and meets because of Board action).

(§ 54952(b))

"MEETINGS"

Definition: "Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its defined purpose*.

(Atty. Gen. Op. No. 00-906 (2/20/01) [collective concurrence reached through e-mail communication].)

WHEN IS "ACTION TAKEN"?

Action taken means:

1. A **collective decision** by a majority of the members of a legislative body; or
2. A **collective commitment** or promise by a majority of the members to make a positive or negative decision; or
3. An **actual vote** by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

(§ 54952.6)

AVOID THE SERIAL MEETING

Chain: If member A contacts member B, and B contacts member C, and C contacts member D, and so on, until a quorum has been involved. This type of "serial meeting" may result in a violation of the Brown Act.

Hub and spoke: An intermediary, such as the Executive Director or City Official, contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body. This type of "serial meeting" may also result in a violation of the Brown Act.

WHAT IS NOT A "MEETING"?

Individual contacts or conversations that are not "serial" in nature

If no discussion regarding business of a specific nature that is within the subject matter jurisdiction of the agency among themselves, a majority of the members of the body may attend:

- A social or ceremonial occasion;
- A conference if open to the public;
- An open and publicized meeting of another organization; or
- A meeting of another public body

(§ 54952.2)

TECHNOLOGICAL CONFERENCING

Meetings may be conducted by teleconferencing (i.e., any electronic audio or video connection) under the following conditions:

1. agendas posted at video teleconferencing locations specifying all teleconference locations;
2. public access to teleconference locations;
3. public opportunity to speak at each teleconference location; and
4. votes taken by roll call.

At least a quorum of the members of the legislative body must participate in the teleconference within the boundaries of the local agency.

(§ 54953(b))

REGULAR MEETINGS

Regular meetings of the legislative body, excluding advisory committees and standing committees, must be held at the time and place set by your bylaws.

(§ 54954(a))

SPECIAL MEETINGS

The presiding officer or a majority of the legislative body may call a special meeting at any time.

Written notice must be delivered to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing at least 24-hours before the time of the meeting.

Only the business set forth in the notice may be considered at the meeting.

(§ 54956)

EMERGENCY MEETINGS

- The legislative body determines a work stoppage, crippling disaster, or other activity severely impairs public health or safety.
- The legislative body determines that a "dire" emergency exists, such as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses immediate and significant peril.
- The special meeting provisions apply to emergency meetings, except for the 24-hour notice.
- News media must be notified by telephone at least one (1) hour in advance of an emergency meeting, and all telephone numbers provided must be tried. If phones are not working, the notice requirements are deemed waived, but the news media must be notified as soon as possible of the meeting and any action taken.
- Closed session permitted during an emergency meeting if agreed to by 2/3 vote of the members present (or all members if less than 2/3 present).
- The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the meeting as possible.

(§ 54956.5)

AGENDA REQUIREMENTS

A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body. The agenda must be posted at least 72 hours in advance of the meeting to which it relates. If it's a special meeting, the agenda must be posted 24 hours in advance.

Each item of business to be "transacted or discussed," including items to be discussed in closed session, must be the subject of a "brief general description" which generally need not exceed 20 words.

(§ 54954.2)

NON-AGENDA ITEMS

Action or discussion on any item not appearing on the posted agenda is generally prohibited except that members may **briefly respond** to statements made or questions posed by the public.

Members may:

- ask a question for clarification
- make a brief announcement/ report on activities
- provide a reference to staff or other sources for factual information
- request staff to report back to the legislative body in a subsequent meeting

A member of the legislative body, or the body itself, may take action or direct staff to place a matter of business on a future agenda.

(§ 54954.2)

STATUTORY EXCEPTIONS TO ACTION ON NON-AGENDA ITEMS

A legislative body may take action on items of business not appearing on the agenda under the following conditions :

- a. *Emergency Situation*: When a majority decides that an emergency situation exists (i.e., work stoppage, crippling disaster, etc.).
- b. *Subsequent Need Item*: When two-thirds present (or all members if less than two-thirds are present) determine there is a need to take immediate action and that the need for action “came to the attention of the local agency subsequent to the agenda being posted.”
- c. *Hold Over Items*: When the item appeared on the agenda of, and was continued from, a meeting held not more than five (5) days earlier.

(§ 54954.2(b))

LOCATION OF MEETINGS

Regular and special meetings must be held within the boundaries of the legislative body except when:

1. Complying with **federal or state law** or court order;
2. Inspecting **real property or personal property** that cannot be conveniently brought to the legislative body's jurisdiction;
3. Participating in **multi-agency meetings** (provided the meeting takes place in a member agency's jurisdiction and is properly noticed);
4. Meeting in the **closest meeting facility** if the local agency has no meeting facility within its boundaries;
5. Meeting with **elected or appointed federal or state officials** when a local meeting would be impractical (solely to discuss local issues over which such officials have jurisdiction);
6. Meeting in or nearby a **facility owned by the agency** (provided the meeting is limited to items directly related to the facility);
7. Visiting the **office of its legal counsel** for a closed session on pending litigation when to do so would reduce legal costs.

(§ 54954)

PERSONS PERMITTED TO ATTEND

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting.

No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or sex, or which is inaccessible to the disabled. [But see Atty Gen'l Op. 00-1210 (11/14/01) (City not required to accommodate disabled city council member by providing teleconferencing connection at member's home which is not open to public.)]

RIGHT TO RECORD

The public is allowed to use audio or video tape recorders or still or motion picture cameras at an open meeting, absent a reasonable finding by the legislative body that such recording, if continued, would persistently disrupt the proceedings due to noise, illumination, or obstruction of view.
(§ 54953.5)

PUBLIC PARTICIPATION

A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.

The public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.

The legislative body may adopt reasonable regulations, including time limits, on public comments (e.g., five minutes).

(§ 54954.3)

PUBLIC CONDUCT

Expressions of support or opposition to matters before the agency (provided they are not overly disruptive) constitute protected speech.

The legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the omissions of the legislative body itself. **(§ 54954.3(c).)**

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared.

Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting.

(§ 54957.9)

OTHER RIGHTS OF THE PUBLIC

Members of the public need not make a payment or purchase in order to be present.

Action by secret ballot, whether preliminary or final, is prohibited.

(§§ 54953.3; 54961; and 54953(c))

MEETING RECORDS

The public has the right to review agendas and other writings distributed to a majority of the legislative body (except for privileged documents). A fee or deposit may be charged for a copy of a public record.

Writings must be made public:

1. if distributed prior to the meeting, at the time the members receive the materials, or
2. if distributed at the meeting, at the meeting if prepared by the agency or a member of its legislative body or after the meeting if prepared by some other person.

Any tape or film record of a public meeting made by or at the direction of the local agency is subject to inspection under the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording.

Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency. The agency may impose its ordinary charge for copies.

(§§ 54957.5 and 54953.5)

Members of public may request agenda packets on annual basis.

Alternate format materials to persons with a disability if requested.

CLOSED SESSIONS: "... EXCEPT AS OTHERWISE PROVIDED..."

The exceptions to the Brown Act's requirement that all meetings be open are termed "closed sessions" and include:

1. Personnel Matters
2. Pending Litigation
3. Real Estate Negotiations

The Ralph M. Brown Act - A SUMMARY FOR BUSINESS IMPROVEMENT DISTRICTS
California's Open Meeting Law

- | | |
|-------------------------|---------------------------------|
| 4. Labor Negotiations | 6. License Applications |
| 5. Grand Jury Testimony | 7. Security of Public Buildings |
- (§ 54957)**

PENDING LITIGATION

Purpose: Discussion with Legal Counsel when discussion in open session would prejudice the agency in that litigation.

- i. **Existing** litigation.
- ii. **Potential** litigation initiated by the agency.
- iii. **Threatened** or anticipated litigation against the agency, based on “*existing facts and circumstances*”

Existing facts and circumstances include:

1. Facts and circumstances that the agency believes are not known to a potential plaintiff.
2. The receipt of a **claim** pursuant to the Tort Claims Act or some other **written communication** threatening litigation.
3. A **statement** made by a person **in the public meeting threatening litigation** on a specific matter within the responsibility of the legislative body.
4. A **statement** made outside a public meeting so long as the official or employee of the agency receiving knowledge of the threat makes a record of the statement prior to the meeting and the statement is available for inspection.

A legislative body may meet in closed session to decide if the above facts and circumstances are present and thus whether the closed session is authorized.

(§ 54956.9)

REAL ESTATE NEGOTIATIONS

Closed session is appropriate to discuss with its real property negotiator the purchase, sale, exchange or lease of real property by or for the agency.

1. OK to discuss price, terms of purchase or sale, or lease, etc.
2. (Please seek legal Counsel on Areas that may not be discussed, *see Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904)

PERSONNEL MATTERS

A closed session may be used to:

1. *appoint, employ, evaluate the performance of, discipline or dismiss* a public employee (Please seek legal Counsel RE: *Duval v. Bd. of Trustees of the Coalinga-Huron Joint Unified Sch. Dist.* (2001) 93 Cal.App. 4th 902); or
2. to *hear complaints* brought against a public employee unless the employee requests a public session upon 24 hours' advance notice.

(§ 54957)

CLOSED SESSION AGENDAS

The Brown Act provides a format for describing closed sessions, which if substantially complied with, provide a “**safe harbor**” from any alleged notice violations of the Act.

(§ 54956.9)

(Please seek legal Counsel on what must be disclosed, *See Shapiro v. San Diego City Council* (2002) 96 Cal. App.4th 904)

REPORTING AFTER CLOSED SESSIONS

The legislative body must report (orally or in writing) any “action” taken in closed session. In general, only final action on a matter need be reported (e.g., an agreement to buy property, settlement of a lawsuit, acceptance of a resignation, etc.).

The Ralph M. Brown Act - A SUMMARY FOR BUSINESS IMPROVEMENT DISTRICTS
California's Open Meeting Law

Copies of such contracts, settlement agreements or other documents finalized in closed session must be made available within 24 hours of the action, or, in the case of substantial amendments or retyping, when complete.

(§ 54957.1)

CRIMINAL PENALTIES

A violation of the Brown Act may result in a misdemeanor charge against a member where:

1. action is taken in violation of the Brown Act; *and*
2. the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled.

(§ 54959)

CIVIL ACTION

The district attorney or any interested person can file a civil action asking the court to:

1. Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body;
2. Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
3. Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
4. Compel the legislative body to tape record its closed sessions.

(§ 54960)

OPPORTUNITY TO CURE

Before filing a court action, the aggrieved party must send a written "cure or correct" demand to the legislative body.

The demand must clearly describe the challenged action, the nature of the alleged violation, and the "cure" sought, and it must be sent within 90 days of the alleged violation. (or 30 days if the action was taken in open session but in violation of agenda requirements.)

The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days.

(§ 54960.1)

INVALIDATION OF ACTIONS

Invalidation is limited to actions in violation of the following sections:

- i. 54953 (the basic open meeting provision);
- ii. 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions);
- iii. 54954.6 (tax hearings); and
- iv. 54956 (special meetings).

Even certain violations cannot be invalidated if they involve:

- v. substantial compliance;
- vi. sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- vii. a contractual obligation upon which a party has in good faith relied to its detriment;
- viii. the collection of any tax; or
- ix. the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.
- x. Courts have also indicated that a challenger must also show prejudice as a result of the alleged violation.